

FEDERAL TRADE COMMISSION

Telemarketing Rulemaking FTC File No. R411001

PUBLIC COMMENT OF ALAN PROCTOR

(April 15, 2002)

This comment is submitted in connection with the FTC's Telemarketing Rule proceeding, Matter Number R411001, and will focus on the "do not call" ("DNC") provisions of the proposed rule.

I believe there is a profoundly solid and eminently reasonable case for providing consumers with a convenient mechanism through which they can advise would-be generators of unsolicited telemarketing phone calls that such calls are not wanted in their homes, and that the Federal Trade Commission is the best and most appropriate government entity to organize and facilitate enabling procedures through which such a consumer preference would be respected by commercial firms. For these reasons, I strongly support the "do not call" ("DNC") provisions in the proposed rule and urge the Commission to adopt and implement them immediately.

My more specific comments and the basis on which they are submitted are detailed below.

Background & introduction.

(1) My interest in this matter is that of a member of the American public, who lives in a home with his family and pays a consider recurring monthly fee for several telephone lines through which my family and I can reach, or be reached by, parties with whom we wish to communicate. I value the privacy my family and I enjoy in our home. I have no other economic interest in this matter.

(2) I am also an expert in modern information and telecommunications systems technologies and applications as they are developed and used in large-scale government and private sector business operations, and on the web.

(3) My household receives many unsolicited phone calls on an ongoing basis, even though we do not want to receive these calls and we have consistently requested companies that place such calls not make them to us. These calls are typically made to

our home on weekday evenings between 7:00 and 9:00 pm, and on Saturdays, and sometimes number more than 5 per day. We live a busy life and because our household receives many calls from people with whom we want to communicate, like family, friends and companies with which we have chosen to do business, we answer our phone consistently. Each and every time telemarketing call we receive interrupts, disturbs, bothers and annoys us. I do not believe that commercial firms have any necessary right to use telephone lines that we pay for to make calls into our home that we do not want.

(4) Neither I nor any member of my household has requested or authorized these calls and the scope of the problem for us with unsolicited phone calls is growing. Notwithstanding efforts to otherwise disguise the purpose of the calls, they generally appear to be made for one or more of three sometimes inter-related purposes: (a) to inform me about the availability of a product or service which the caller would like for me to purchase; (b) to solicit a contribution to specified organizations, some of which may be characterized as “charitable” (educational institution, police or fireman’s retirement fund, etc.); or (c) to conduct what is claimed to be “market research.” Many, if not most, of these calls appear to be from out-of-state locations, and even sometimes from Canada – suggesting that the problem is certainly nationwide, if not increasingly international, in scope. The number of such calls we are receiving is increasing over time, notwithstanding our preference that we not receive such calls, and my repeated request to callers that we be placed on relevant do not call lists. Moreover, an increasing number of these calls are from automated systems that use pre-recorded messages and provide limited or no opportunity to request that the sponsoring firm not call my number again, or to otherwise provide a call-back number through which I can contact the sponsoring organization to request that I not be contacted by them again.

(5) This deluge of unsolicited telemarketing phone calls is adversely affecting the privacy of our home, and creating an irritating, burdensome and unwelcome effect on the enjoyment of our home. I have no basis for believing that my requests to be placed on do-not-call lists have had any effect on reducing the number of calls we receive, and I believe that even if individual organizations to which I have made such requests respect those requests, we would face increasing numbers of such calls as the number of new firms making them continues to grow.

(6) I would consider the Commission’s proposed program for implementing a national do-not-call procedure to be a major benefit for my household and others who desire not to be bothered in their homes with uninvited and unwelcome telemarketing calls. I also firmly believe that it is within my right, as the person paying for my telephone lines, that I exclude from using those lines and further imposing on me and my household, those parties with whom I do not wish to communicate by phone, such as organizations making telemarketing calls. I do not believe either that it should be my responsibility to assume the costs of additional telecommunications capabilities to somehow block or screen out such unwanted calls, or that such technologies are either practical or effective solutions to the problem.

(7) The good news in this otherwise very irritating environment is that modern technology now provides a means through which consumers can efficiently communicate to the market a personal preference that calls not be made to their personal phone number(s), and with the assistance of an appropriate government organization such as the FTC (“Commission”), we have a means of implementing for the public a cost-effective and reasonable solution to this problem.

(8) I urge the Commission not only to implement the proposed “do not call” (“DNC”) provisions quickly, but to embrace and aggressively pursue opportunities for using both a full range of technologies and partnerships with other appropriate players in the market to increase the speed with which these needed protections are implemented; cut public and private costs; increase the quality of service for consumers; reduce possible barriers to competition for private sector companies; and provide alternative compliance mechanisms to meet the special needs of small businesses. The Commission rule should also take account of the fact that much of the information used by telemarketers is acquired from third parties, and that it would be appropriate and efficient for those third parties to integrate implementation of processing of customer DNC preferences into the lists they produce and distribute.

(9) Although it is beyond the scope of this proposed rule, it is also worth noting that if successful the basic procedure proposed by the Commission could be expanded and applied to protect a broader range of privacy interests and preferences of individual citizens. This includes other forms of communications aimed at contacting the consumer through channels paid for by the consumer that the consumer does not want to receive (solicitations by fax, email, etc.). It could also potentially be applied as a means for consumers to communicate effectively their preferences as to businesses sharing and other use of consumer information, across affiliated companies or with other outside parties. Since possible future expansions of the provision would add options and therefore increase the amount and lengthen the time required to collect relevant information to be provided, this would be an additional environment in which web-based processes for submission of consumer privacy preferences would be very efficient.

Responses to selected Commission questions.

(10) Re question (A.1): Effects of the internet on telemarketing. The technology of the internet has demonstrated that the Commission’s proposed rule is technically feasible and reasonable in concept, implementation and operation. As the Commission well knows, the internet is a universe driven in part by the capacity of “mass customization” – the integrating into individual transactions with individual users detailed and sometimes highly personalized information, frequently from multiple databases that are queried and updated on the fly. Within this environment, implementation of a provision that enables users to specify a simple preference with respect to a particular dimension of their personal privacy and a certain kind of transaction is a reasonable, technically simple, and in comparison with the scope of overall business applications, a very minor thing to do.

(11) Re question (A.2): Coverage of for-profit telemarketers working on behalf of sellers outside the FTC's jurisdiction. Definition of the scope of the rule to cover all firms over which the Commission has jurisdiction, even when they are working for firms not directly subject to the Commission's jurisdiction, might affect demand by such firms for services offered by for-profit telemarketing firms, but this reflects only implementation of the policy of the DNC provisions and is not a problem that should deter the Commission from adopting its proposed rule. The congressionally-mandated role of the Commission includes, among other things, defining and adopting reasonable provisions in the public interest involving certain business practices of firms subject to the Commission's jurisdiction. The policy of the proposed DNC rule is appropriate and it should be applied to the full extent of the Commission's jurisdiction for maximum public benefit. The Commission's rule should apply to telemarketing operations of any firm subject to the Commission's jurisdiction.

(12) Re question (D.4): Adequacy of provision to address problem of telemarketers hanging up on consumers. In my experience telemarketers frequently hang up when they learn that I do not want their telephone solicitation and without any opportunity for me to request, much less be offered, the opportunity to be placed on their do not call list. In my view, this is one of the many bases which justify the Commission's proposed DNC rule.

(13) Re question (D.5.d): Length of time that a telephone number remains on the DNC registry. Once a telephone number is properly placed on the DNC registry it should remain there indefinitely until it is requested to be removed by the authorized and assigned user of that number. This rule is about protecting the privacy of consumers who do not want to be bothered by a class of unwanted telephone calls, and once that preference is expressed, it should be respected without more. Annual re-registrations is an unnecessary burden for consumers, and potentially an unnecessary and costly burden for the Commission to manage. Consumer preferences for such calls are not likely to change, and if they do, the way to handle this is to educate such consumers through means that do not violate their privacy that they have the option of changing their DNC preference. In this respect, it seems it would be an appropriate, useful, and virtually cost-free service for the local telephone exchange companies which manage accounts associated with individual numbers to reflect on service summaries the DNC status of telephone numbers, based on the information contained in the Commission's proposed DNC registry, and as part of their service to their customers, to advise them on how the status of the DNC preference could be changed if a customer wants to do so. This would be a good example of a "public/private partnership" with benefits for all parties. Similarly, when that company reassigns a number, there are two ways it could handle the possible updating of the DNC preference for the given number. First, and most simply, it could advise the recipient of the reassigned number of the Commission's rule, the possibility that the DNC status is to block telemarketing calls (or the current status as shown on the Commission's DNC registry), and advise the consumer on how to have that status changed. Alternately, though at potentially somewhat greater cost to the Commission and local exchange companies, the Commission could implement a procedure under which local exchange companies could, if they desired to do so, advise

the Commission when a number is reassigned, and on receipt of this information, which would presumably be automated, the Commission could reset the DNC status of transferred numbers to unblocked.

(14) Re question (D.5.e): Who should be permitted to place a telephone number on the DNC registry? The person (or any one of the persons) to whom a telephone number is assigned should be permitted to update registry information with respect to whether their DNC preference is on or off, and this should include any agent that person may have authorized to communicate such a preference to the Commission. I would presume that other Commission rules, and laws of agency in various jurisdictions, would specify what record keeping is required to document such a transfer of agency authority for another to represent the consumer, and provide adequate incentives for firms to be deterred from improperly claiming to have been authorized to act as an agent for another when they have not. For this reason, and to keep this procedure simple to begin with, I would be inclined to think that the Commission should refrain from implementing specific record keeping requirements at this time and until it becomes clear that there is a problem that needs to be addressed through additional procedures. I think the Commission should recognize that there is potentially tremendous value for it, the public, telemarketers, and others, in permitting consumers to express their preferences through designated agents, especially if there are means through which persons to whom numbers can be assigned can easily check the status of their DNC preference. In this respect, I would expect that many other organizations might well see it in their business interest to offer their agency in this respect to various persons with whom they have relationships. For example, local telephone companies could, if they desired, incorporate the acquisition and forwarding of this information as a service to their customers; similarly, designation of this preference could be incorporated as an optional service into various other web-based portals and other services.

(15) Re question (D.5.f): Security measures to ensure that only authorized persons submit DNC preference information with respect to a given number. This is a potentially challenging area where the Commission should be careful in the early stages of this test period to strike a balance between due care required to be responsible in setting up a system, and an overly-cautious approach which would saddle the procedure with undue costs. Much of the problem revolves around the challenge of “authentication” of communications, verifying that parties are who they represent themselves to be. In general, I would recommend relying on two approaches that minimize short-term burden for the Commission as much as possible; under the circumstances of these procedures, where no money is involved, changes are verifiable and actions are reversible, these might well prove to be adequate. First, there should be clear penalties for pretending to be someone other than a person is, and these penalties should be communicated to persons who interact with Commission systems and staff. Second, the Commission could use several technology-based approaches to minimize risk where appropriate. These include the following: in connection with requests that are received by telephone, the Commission could require that requests for DNC preferences be made on the same number to which they would apply, and engineer the system to implement this requirement. This would work for all exchanges capable of transmitting

DID information, which much but not all of the exchanges and systems in the country. Alternately, or in addition, the system could implement an automated procedure under which before implementing the DNC preference, a Commission system would initiate a call to the specified DID and request verification from the person who submitted the request that the request is valid. (An automated voice capture capability could be used to automate the process of getting the name of the requester when the request is submitted, and then identifying that requester when the reply call is made.) In the case of web or email-based submissions, a similar procedure could be followed, under which reply to a Commission-generated email verifying the request would be required before the DNC preference is implemented.

(16) Re question (D.5.g): Should consumers be able to verify that their numbers have been placed on the DNC registry. Absolutely. This is a necessary element of giving consumers control over their information (in this case knowing that their preference has been implemented properly) and making it easy for them to do so. Consumers should be able to request verification by the Commission in at least the following three, automated and electronically-enabled ways: telephone call from the same DID as registered, where on connection, the system confirms the DNC status and then gives the consumer the option to change that status; by telephone where calling from a number other than the registered DID, or from a DID that does not support automatic number identification,, where the consumer “enters or says” the consumer’s phone number, and the system then places a callback to that number with the status information; or by email to a specified system-maintained address, where the requester submits the telephone number in question and the system sends a confirming email to the email provided by the requester at the time the preference was provided. As noted above, I would hope and expect that arrangements could also be developed with other third-party partners of the Commission through which consumers could not only submit DNC preferences, but also confirm the current DNC status on a line. Such partners could include, among others, local exchange phone companies and various web portal providers.

(17) Re question (D.5.h): Consumer specification of days and hours of calls. I think the Commission should start simple in this area, during an initial trial, and then expand based on experience. In theory, specification of options according to days of the week and hours of the day (and probably many others as well) would add value for some consumers and telemarketers, and it could certainly be implemented on a cost effective basis, at least through the web. That said, these options, even if presented in short, summary fashion, would also involve increased complexity, in terms of perceived level of difficulty, required time, education and understanding, etc, which would be a disadvantage in first beginning the system, and it would be considerably more challenging to implement them in a simple, easy-to-use and cost-effective basis on any platform other than a web-based system.

(18) Re question (D.5.i): Distinguishing between telemarketing calls that are oriented toward inducing purchases and those that solicit charitable contributions. This would be a “nice to have,” and it would be simpler to implement than the days/hours options addressed above, but again, it may be smart to keep the application as simple as possible to begin with. On the other hand, because this would be a limited, and relatively simple option to implement, the answer should also probably take account of consumer preferences, as measured both through public comment on this proposal and possibly through direct quantitative market research. If it is determined that there is at least a considerable minority of the public that would prefer this option, I believe the Commission should seriously consider implementing it in deference to the important role served by non-profit organizations in our society. In any case, however, consumers should retain the option of expressing their DNC preference to apply to all telemarketing calls potentially generated by any firm subject to the jurisdiction of the Commission.

(19) Re question (D.7): Changes in assignments of numbers. See comments in connection with question D.5.d above.

(20) Re question (D.9.d): Sufficiency of protection to consumers afforded by the proposed rule’s express verifiable authorization provision. The language of the proposed rule, in Section 310.4(b)(1), should be changed and tightened up to avoid gutting of the intent of the rule by firms (and over time, industries) which could come as a matter of course to include boilerplate language routinely granting such authorization in connection with the acceptance by the consumer of any form of signed account relationship for other purposes, and to permit consumers to withdraw such authorization once given if the consumer changes his or her mind. For example, a large consumer retail or financial services company or web site offers some form of account for some purpose to customers; included in the form language of this non-negotiable account agreement is written, express authorization, for the firm or its agents to make telemarketing calls to the customer on its behalf. A consumer signs or otherwise electronically accepts the agreement in order to establish the desired relationship, neither having necessarily the knowledge of the protection the consumer has just given up, or the option to accept the relationship but withhold authorization of telemarketing calls. To avoid the possibility of this scenario, the Commission should structure the rule to require that consumer agreements not be conditioned upon consumer granting of such authorization; that where the option of granting such authorization is offered in connection with other terms of a consumer arrangement, the arrangement must expressly state that consumer acceptance is

not a condition of the arrangement and can be withheld at the consumer's option; the authorization must be specifically and separately accepted by the consumer; and the consumer shall retain the option for the duration of the arrangement to withdraw the consumer's authorization upon reasonable notice to the firm.

Respectfully submitted,

A handwritten signature in black ink that reads "Alan Proctor". The signature is written in a cursive, flowing style with a large initial "A" and a long, sweeping underline.

Alan Proctor